

THE STATE OF OHIO,       )  
                              ) SS:                   JOHN J. RUSSO, J.  
COUNTY OF CUYAHOGA.    )

IN THE COURT OF COMMON PLEAS  
(CRIMINAL BRANCH)

THE STATE OF OHIO,                        )  
  )  
                              Plaintiff,    )  
  )  
              vs.                                ) Case No. CR-88-232189-A  
  )  
THOMAS M. KEENAN,                        )  
  )  
                              Defendant.    )

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EXCERPT OF TRANSCRIPT OF PROCEEDINGS

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Whereupon, the following proceedings  
were had in Courtroom No. 17-A, The Justice  
Center, Cleveland, Ohio, before the  
Honorable John J. Russo, on Thursday,  
September 6, 2012, upon the indictment filed  
heretofore.

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APPEARANCES:

William D. Mason, Prosecuting Attorney, by:  
Rick Bell, Assistant Prosecuting Attorney,  
Aaron Brockler, Assistant Prosecuting Attorney,  
Katherine E. Mullin, Assistant Prosecuting Attorney,

On behalf of the State of Ohio.

John Gibbons, Esq.,  
John Hildebrand, Esq.,

On behalf of the Defendant.

Diane L. Cieply, RMR  
Official Court Reporter  
Cuyahoga County, Ohio

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2 THURSDAY MORNING SESSION

3 SEPTEMBER 6, 2012

4 THE COURT: That being said, then I have  
5 an opinion with respect to the Motion to Dismiss,  
6 and so I'm going to read that opinion here this  
7 morning.

8 So for all of you who are present in  
9 Court, it's important for this Court to note that  
10 I must completely refuse to be swayed or  
11 influenced by considerations such as sympathy for  
12 or bias or prejudice against either the State of  
13 Ohio or Mr. Keenan in this case.

14 In making this decision this morning, the  
15 Court has considered the prior rulings by the Ohio  
16 Supreme Court and of the Northern District Court  
17 of Ohio, all discovery motions that have been  
18 filed by the parties in this case, Mr. Keenan's  
19 Motion to Dismiss, the State's Brief in  
20 Opposition, and all the oral arguments that I  
21 heard on August 23rd of 2012.

22 And after reviewing all the relevant  
23 motions and case law, the Court finds that the

24 Eighth District Court of Appeals case,  
25 State v. Larkins, to be the instructive,

1       compelling, and controlling case before this  
2       Court.

3               In Larkins, the State of Ohio appealed the  
4       Trial Court's dismissal of a 1986 felony murder  
5       indictment against the Defendant at that time,  
6       Ronald Larkins. The Eighth District Court of  
7       Appeals upheld the dismissal with prejudice of the  
8       case based on the State's discovery violations and  
9       found it to be the extraordinary case where the  
10      prejudice could not be cured by a new trial.

11             As part of that analysis in Larkins, the  
12      Eighth District Court of Appeals refers to the  
13      tests that were used by the Ohio Supreme Court in  
14      the case of State v. Wiles. In Wiles, the Ohio  
15      Supreme Court held that a Trial Court has  
16      discretion under Criminal Rule 16(E)(3), which is  
17      presently now in 2012 Criminal Rule 16(L)(1), to  
18      determine the appropriate response for failure of  
19      a party to disclose material subject to a valid  
20      discovery request. To determine whether a Trial  
21      Court has abused its discretion in dealing with  
22      Criminal Rule 16 violations, the Appeals Court  
23      looks to the following three-prong test:

24                   The first prong is the violation and was  
25           the violation willful; the second prong is

1       foreknowledge, would foreknowledge have benefited  
2       Mr. Keenan or the Defendant; and the third prong  
3       is has the Defendant suffered prejudice as a  
4       result of the State's failure to disclose the  
5       information.

6               Applying that test to this case, I'm going  
7       to make the following specific findings of fact as  
8       they pertain to this case:

9               As to the first prong, it is without  
10       question, based on the egregious history of the  
11       prosecutorial misconduct and the Brady violations  
12       outlined in detail by both the Ohio Supreme Court  
13       and the Northern District Court of Ohio in this  
14       case that the State willfully withheld exculpatory  
15       evidence from Keenan and his attorneys.

16              Looking at the second prong, the knowledge  
17       of this material prior to trial would have clearly  
18       benefited Mr. Keenan's case.

19              It would have allowed for more effective  
20       Cross-Examination of witnesses, especially  
21       Edward Espinoza, the Co-Defendant, and the alleged  
22       sole eyewitness to this crime.

23              The evidence that Paul Lewis had been

24           indicted for the rape of Christopher Longenecker,  
25           that Anthony Klann, the decedent, had some



1 knowledge of this rape, and that Paul Lewis had  
2 never been prosecuted for it would have also been  
3 beneficial for Keenan. This evidence could have  
4 strengthened Keenan's case by establishing a  
5 motive of someone other than Keenan for the murder  
6 of Anthony Klann.

7 For the same reasons, the evidence that  
8 Paul Lewis was the anonymous caller who called  
9 police and identified Anthony Klann as the murder  
10 victim, and had information regarding the murder  
11 that was not publicly known could also have  
12 benefited Mr. Keenan's case.

13 The evidence that the initial responding  
14 detectives believed the murder to have occurred  
15 somewhere other than Doan's Creek would have  
16 allowed a more effective questioning of the police  
17 investigation, impeachment of Espinoza, and could  
18 have cast doubt on the State's theory of the case.

19 The cassette tape that was made by  
20 Angelo Crimi that may have implicated others in  
21 the murder would have been obviously beneficial to  
22 the Keenan case. The disclosure of the existence  
23 of this tape and its subsequent disappearance

24           could have held significant impeachment value  
25           towards the impeachment of the police and

1 Edward Espinoza.

2 James "Lightfoot" Russell's relocation  
3 request could have been used by Keenan's defense  
4 counsel to question the State of Ohio regarding  
5 his unavailable status in the second trial.

6 The statements made by the neighbors,  
7 Theresa Farinacci, and the older couple who was  
8 not identified, would have strengthened the  
9 initial detective's conclusion that the murder  
10 occurred somewhere else or somewhere other than  
11 Doan's Creek.

12 It could have also been used to question  
13 the thoroughness of the police investigation, and  
14 Paul Lewis' involvement in the crime since the  
15 statements were overheard by neighbors near  
16 Mr. Lewis' apartment.

17 It is clear to this Court that the  
18 exculpatory evidence would have strengthened and  
19 been beneficial to Keenan's case as outlined in  
20 prong two.

21 Looking at the third and final prong, has  
22 Keenan suffered severe prejudice as a result of  
23 the State's failure to disclose the exculpatory

24 evidence.

25 Keenan's case is now 24 years removed from

1           the crime. The witnesses would have to testify to  
2           detailed issues that took place that long ago,  
3           including the date and time of this alleged murder  
4           which have never been decisively established.

5                     The only alleged eyewitness,  
6           Edward Espinoza, is deceased. And his testimony  
7           is not admissible because he was never able to be  
8           cross-examined with the newly-discovered  
9           exculpatory material. Additionally, Keenan was  
10          never able to use the exculpatory evidence to  
11          impeach Espinoza.

12                    Other witnesses of importance are also  
13          deceased including Detective Timothy Horval,  
14          Lee Oliver, Angelo Crimi, and James Russell. None  
15          of whom have been able to be cross-examined or  
16          confronted with the exculpatory evidence.

17                    The Keenan case before the Court today  
18          clearly satisfies the three-prong test as outlined  
19          by the Ohio Supreme Court case of State v. Wiles.  
20          As in Larkins, this case is the unique and  
21          extraordinary case, that the harm done to  
22          Mr. Keenan cannot be resolved by a new trial, and  
23          this Court is going to dismiss this case with

24           prejudice.

25                   The Court finds that Thomas Michael

1        Keenan's Motion to Dismiss the Indictment Against  
2        Him with Prejudice must be granted in the interest  
3        of justice and fairness. In light of the State's  
4        egregious prosecutorial misconduct and the Brady  
5        violations in Keenan's prior two trials, Keenan  
6        cannot receive the fair and Constitutional trial  
7        that he is entitled to today.

8                Further, it is the State's position that  
9        the Brady violations have already been sanctioned  
10       and the relief has already been ordered by the  
11       Northern District Court of Ohio, and the sanction  
12       was for a new trial or for a dismissal by the  
13       State. I believe the State is mistaken in this  
14       assertion.

15               Neither the Eighth District Court of  
16       Appeals in Larkins, nor the Northern District  
17       Court of Ohio in this case characterized their  
18       order for a new trial as a sanction against the  
19       State of Ohio.

20               The Larkins Court goes on to explain that  
21       Criminal Rule 33(D) and Ohio Revised Code Section  
22       2945.82 govern the matter in which a new trial is  
23       to be conducted. Criminal Rule 33(D) states that

24           when "a new trial is awarded on appeal, the  
25           accused shall stand trial upon the charge or



1 charges of which he was convicted." Ohio Revised  
2 Code Section 2945.83 states, "when a new trial is  
3 awarded on appeal, the accused shall stand for  
4 trial upon the indictment or information as though  
5 there had been no previous trial thereof."

6 Larkins concluded that "once a new trial  
7 is ordered, matters stood in the same position  
8 they did before any trial had been conducted. It  
9 follows then that this Trial Court possesses all  
10 authority to reopen discovery or entertain any  
11 pretrial motions available at law," such as the  
12 motion before the Court today.

13 Therefore, while the Court is aware that  
14 it has an obligation to impose the least severe  
15 sanction that is consistent with the purposes of  
16 the rules of discovery, I find that Keenan's case  
17 is the unique and extraordinary case where the  
18 prejudice created cannot be cured by a new trial.

19 I do want to state, the Court wants to  
20 make a clear statement that the decision here  
21 today is not a reflection on the current team of  
22 Assistant County Prosecutors that have been  
23 assigned to this case. They have conducted

24           themselves in a professional and forthcoming  
25           manner.

1           Nor is this a reflection of the Court's  
2           opinion on Keenan's guilt or innocence. Instead,  
3           it is a decision that is founded in the basic  
4           right that our forefathers envisioned for those  
5           accused of a crime to be afforded a fair trial  
6           free from prejudice and misconduct.

7           Pursuant to the mandate of Larkins,  
8           Criminal Rule (16)(L)(1), and Criminal Rule 48(B),  
9           this Court is left with no other option but to  
10          grant Defendant Thomas Michael Keenan's Motion to  
11          Dismiss the Indictment Against Him with Prejudice.

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## C E R T I F I C A T E

I, Diane L. Cieply, Official Court Reporter for the Court of Common Pleas, Cuyahoga County, Ohio, do hereby certify that I am employed as an Official Court Reporter, and I took down in stenotypy a portion of the proceedings had in said Court of Common Pleas in the above-entitled cause; that I have transcribed a portion of my said stenotype notes into typewritten form, as appears in the foregoing Transcript of Excerpt of Proceedings; that said transcript is a partial record of the proceedings had in the said cause, and constitutes a true and correct Transcript of Excerpt of Proceedings had therein.

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Diane L. Cieply, RMR  
Official Court Reporter  
Cuyahoga County, Ohio

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